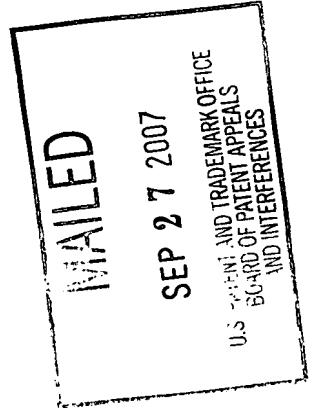


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Lepage et al.

Application No. 09/205,318
Appeal No. 2006-0134



DECISION ON PETITION

This is a decision on the "Renewed Petition Under 37 CFR § 41.3 to Suspend Filing Deadline Requirement of Rule 41.50(a)(2)," (Renewed Petition), filed September 19, 2007.

FINDINGS OF FACT

1. On April 14, 2004, the Board remanded this application to the examiner for reconsideration of a rejection under 35 U.S.C. § 251 in light of *Ex parte Eggert*, 67 USPQ2d 1716 (Bd. Pat. App. & Int. 2003).
2. On May 27, 2005, Appellants filed a Power of Attorney, changing their counsel.
3. On June 8, 2005, the Office mailed a Supplemental Examiner's Answer to Appellants' previous counsel.
4. Appellants' previous counsel forwarded the Supplemental Examiner's Answer to Appellants' present counsel in a timely manner.
5. Through inadvertence, Appellants' present counsel, and specifically the docketing department of Appellants' counsel, failed to properly docket

that a response to the Supplemental Examiner's Answer was due within two months from the mailing date of the Supplemental Examiner's Answer, or by August 8, 2005. 37 C.F.R. § 41.50(a)(2) (Rule 41.50(a)(2)).

6. On November 1, 2005, Appellants' present counsel was made aware of the docketing oversight by the Assignee of the application.

7. On December 12, 2005, Appellants filed a "Petition to Suspend the Rules Under 37 CFR § 1.183 and Petition for Extension of Time Under 37 CFR § 1.136(b) (Initial Petition) along with "Appellants' Reply Brief Pursuant to 37 C.F.R. § 41.50" (Reply Brief).

8. On September 5, 2007, the Chief Administrative Patent Judge entered a Decision on Petition denying Appellants' Initial Petition without prejudice to Appellants filing a renewed petition.

9. In the Renewed Petition, Appellants set forth facts and present evidence establishing that a good faith effort was made by the docketing clerk of Appellants' present counsel, albeit in error, to docket the Supplemental Examiner's Answer and the time period for responding thereto. Specifically, it appears that the docketing clerk entered the Supplemental Examiner's Answer into the docketing system and the system failed to generate a time period for responding thereto.

10. The docketing system, including software, used by Appellants' present counsel at the time the Supplemental Examiner's Answer was received, was a commercially available system, which was relied upon by the docketing clerk to generate proper periods for responding to Office communications.

DISCUSSION

The reliance by the docketing clerk on a commercially available docketing system to generate the proper time period for responding to the Supplemental Examiner's Answer was reasonable. The failure of the system to generate such time period constitutes an extraordinary situation warranting suspension of the filing deadline of Rule 41.50(a)(2).

DECISION

In the interest of justice, the Renewed Petition is **GRANTED** and consideration of the Supplemental Examiner's Answer and Reply Brief will proceed.

Michael R. Fleming
Michael R. Fleming
Chief Administrative Patent Judge
Board of Patent Appeals and Interferences

Application 09/205,318

Appeal No. 2006-0134

Keith R. Jarosik
Hanley, Flight & Zimmerman LLC
150 South Wacker Drive
Suite 2100
Chicago, Illinois 60606

Tel: (312) 580-1020